ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM REPORT

Friday, March 7, 2003 10:00 a.m. - 3:00 p.m. Sandra Day O'Connor Federal Courthouse Phoenix, AZ

| Members Present | <u>Participants</u> | Members Absent |
|-------------------------|------------------------|------------------------------|
| Hon. Michael C. Nelson | David L. Withey, Staff | Hon. Leroy S. Bedonie |
| Hon. William Canby, Jr. | Quannah Ged | Hon. Cornelia Cruz |
| Mark Curry | | Hon. Gary LaRance |
| Frederick Steiner, Jr. | | Hon. Sherry Hutt |
| Sue Hall | | Hon. Malcolm Escalante |
| Hon. Earl Carroll | | Frederic Kay |
| Diane Humetewa | | Hon. Neil Flores |
| | | Hon. Gloria Kindig |
| | | Hon. Kathleen Gratz |
| | | James Redpath |
| | | Hon. William R. Rhodes |
| | | Kathlene M. Rosier |
| | | Hon. Charles T. Brandel, Jr. |

CALL TO ORDER

Judge Nelson called the meeting to order at about 10:15 AM.

PRIOR MEETING REPORT APPROVAL

Members present had no changes to November 15, 2002 meeting report.

STATUS REPORTS

- A Tribal Laws and Courts Work Group (Work group Chair, Kathleen Rosier was unable to attend the meeting but provided an e-mail received following the meeting. Relevant information from this e-mail is incorporated in this report.)
 - Compilation and publication of laws of most interest to Non-Indians (commercial, hunting and fishing, traffic) ASU Law Students have not
 undertaken this project yet. ASU students may be available this summer. At Judge
 Carroll's suggestion, David Withey will contact University of Arizona and Northern
 Arizona University Indian programs to see if professors and students would be
 interested in providing research assistance to the Forum.

• Tribal Laws and Courts Information - ASU College of Law Indian Legal Programs maintains a web page called "Arizona Tribal Courts" which may be accessed from the "Useful Links and Resources" page at http://www.law.asu.edu/Programs/Indian/Links.aspx. This page provides practitioners directory information on the tribal courts in Arizona, how to find tribal codes and court opinions, and qualifications to practice in tribal court. A document used for a presentation at the recent Indian Law 101 seminar provides this information in a Word spreadsheet format and may be obtained from Ms. Rosier or Mr. Withey. The site also contains information and links concerning tribal attorneys and Indian law research materials.

Fred Steiner will contact Ms. Rosier or Professor Tsosie as needed concerning matters pending in this work group.

B. Intergovernmental Cooperation Work Group

- **ICWA checklist for state judges** Mr. Withey will provide the draft checklist to juvenile judges committee for comment and check with Suzanne Johns regarding use of the checklist for dependency training scheduled for May. 2003.
- Service of Process Rule Proposal Judge Nelson described problem of service of process on Indian reservations and the rule changes he drafted to solve this problem.

Problem: Current law permits service of process on reservation based upon whether the person served is Indian (certified mail) or Non-Indian (any process server). Whether defendant is Indian or Non-Indian may not be known. **Solution:** Authorize service in person with tribal certified process server or by certified mail on anyone on reservation. The affidavit of service would indicate the authority of a process server. Delivery of certified mail would need to be

limited to the particular person to be served. **Process:** The draft rules are referred to Intergovernmental Cooperation Work

Group and Forum members for report back and discussion at the next meeting.

Judge Nelson will draft language explaining the rule change for use in a Rule 28 petition. Once approved by the Forum, the draft should be distributed to tribal

attorneys (Ms. Humetewa offered to provide a list), Indian law Section of the State Bar, and Alberta Tippiconnic at the Intertribal Council of Arizona.

Research needed: Determine current status of service of process on reservations - Quannah Ged, ASU Law student working with Diane Humetewa in the U.S. Attorney Office will do research.

• Indian Country Jurisdiction Chart - members discussed the use of the chart produced by Diane Humetewa. Mr. Withey will provide the chart to the appropriate benchbook committee and staff for review and comment. Ms. Humetewa will prepare a questionaire ???????????????????????

C. Education Work Group

- ASU research assistants' review of benchbooks Mr. Curry will provide comments on the work completed to Ms. Rosier. Ms. Rosier will attempt to identify a student to continue the review this summer.
- Arizona new judge orientation Indian law topics Mr. Withey stated that Judge Kindig is on the committee and working to incorporate Indian law and jurisdiction content.

- Indian Law Seminar at Arizona Judicial Conference ASU College of Law Indian legal Programs will sponsor a program at the judicial conference in June (*scheduled for June 19, 2003, 9 AM to Noon*). Mr. Withey will contact Rebecca Tsosie to assist in planning.
- **D.** Court Forum Web Pages Mr. Withey demonstrated the layout of Forum web pages at the beginning of the meeting. The pages will soon be installed on the Arizona Supreme Court web site and the web address will be provided.
- E. Tribal court domestic violence protective orders incorporation into state database -Mr. Withey reported that he had not received any communication from Judge Brandel regarding connecting the San Carlos Apache Tribal Court to the Arizona database.
- **F. QUADRO Legislation** Members suggested that this congressional bill be promoted by contacting the Intertribal Council of Arizona (Mr. Curry volunteered) and by sending it to chief judges of tribes so they can ask that it be included on each tribes legislative agenda. Mr. Withey will include this in a mailing to chief judges on Forum membership.
- **G.** Indian Law question on Bar exam Ms. Humetewa suggested a generic endorsement by Forum of including Indian law issues. She informed members that the Indian Law section had pursued this in the past and will determine the status of their efforts. Mr. Withey will obtain more information on the recent action on this subject in New Mexico.

NEW BUSINESS

- A Information sheets on protocol for probation supervision by state probation officers within reservation boundaries and by tribal probation officers in each county outside reservation boundaries Mr. Withey will ask Administrative Office of the Courts probation division directors to assist in identifying any existing protocols for on reservation supervision.
- **B.** Four Corners Tribal-State-Federal Judicial Exchange Forum members indicated interest in participating in this event and are willing to contribute the expertise of members and staff. Mr. Withey will convey this interest.
- C. DUI Criminal History Exchange Judge Nelson reported that Joe Shirley, Navajo Nation President, wants DUIs from the Navajo Nation courts included in state databases so they are accessible to federal and state courts and licensing authorities. Ms. Humetewa explained Pres. Shirley's family tragedy that prompted this interest. Federal sentencing currently does not count prior tribal convictions due to lack of attorney representation. A proposal is pending to count "counseled priors". Vehicular manslaughter sentencing guidelines are being reconsidered. Tribal conviction is currently used for enhancement only not as a prior conviction like a state court conviction. There is an issue as to whether tribal court convictions of persons not represented by an attorney can be used to enhance sentences. Judge Nelson questioned how the Forum can take advantage of this opportunity to share information? Mr. Withey will consult AOC staff responsible for criminal history record information.
- **D. Next Meeting** Mr. Withey will identify a location and a date during the second or third week in July, 2003. Ms. Humetewa suggested the Yavapai-Prescott Tribal Court as a

possible location.

ADJOURNMENT

The meeting adjourned at about 2:30 PM. Judge Canby provided a tour of the courthouse.